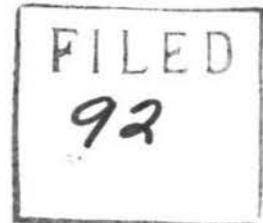


June 19, 1973

OPINION LETTER NO. 92
Answer by Letter - Jones

Honorable George J. Donegan
Representative, District 146
1714-18 East Meadowmere
Springfield, Missouri 65804



Dear Representative Donegan:

This letter is to acknowledge receipt of your request for an opinion from this office in regard to the constitutionality of certain provisions of Senate Bill No. 548, which was passed by the 76th General Assembly and which became effective on August 13, 1972, relating to the Missouri State Employees' Retirement System. Specifically you inquire as to whether or not subsection 2 of Section 104.372, RSMo, is arbitrary and discriminatory as to members who retired prior to August 31, 1972.

Subsection 2 of Section 104.372, RSMo, as set forth in House Bill No. 548, provides as follows:

"2. When a member who was an employee on August 31, 1972, thereafter retires, or when a former member who has been restored creditable service in accordance with the provisions of subsection 4 or 6 of section 104.350 retires, or who is entitled to a deferred annuity under subsection 4 of section 104.330, the board shall pay him an amount equal to his accumulated contributions and credited interest to the date of his retirement. This amount is in addition to any retirement benefits to which he is entitled; but, the provisions of this subsection shall not apply to members who elect to receive benefits because of service in the general assembly."

Honorable George J. Donegan

Thus, under the above statutory provision, a member who retired prior to August 31, 1973, is not entitled to a refund of his accumulated contributions and credited interest, in addition to his retirement annuity.

It is a well-settled rule of constitutional construction that only when there is a clear conflict between a legislative enactment and the Constitution are the courts warranted in declaring the law to be void. Borden Company v. Thomason, 353 S.W.2d 735, 743 (Mo. banc 1962). There is also authority for the proposition that as to the question of classification, the courts should sustain it if there is any reasonable basis for the classification. Ballentine v. Nester, 164 S.W.2d 378 (Mo. banc 1942). The general rule with respect to the classification of beneficiaries is stated in 60 Am.Jur.2d Pension and Retirement Funds §39, page 909, as follows:

" . . . And the courts have sustained the constitutional validity of statutory provisions relating to classification of beneficiaries of pension or retirement benefits for public civil employees, as against the contention that such provisions amounted to unlawful discrimination against persons who would otherwise be entitled to receive the benefits of the fund, or that they constituted class legislation not based on a reasonable ground of distinction."

We have examined the portion of the bill in question and find no constitutional infirmity.

Yours very truly,

JOHN C. DANFORTH
Attorney General